

From: Williams , Laurie [Williams.Laurie@epa.gov]
Sent: 7/21/2012 12:40:10 AM
To: Mitchell Klein [mjklein@polsinelli.com]
CC: 'Black, Ken' [Ken.Black@bhpbilliton.com]; Lucas Narducci [LNarducci@Polsinelli.com]; Ripperda, Mark [Ripperda.Mark@epa.gov]; Rongone, Marie [Rongone.Marie@epa.gov]; TROMBADORE, CLAIRE [Trombadore.Claire@epa.gov]
BCC: Clancy Tenley [Tenley.ClancyLNDU@usepa.onmicrosoft.com]; Jacobs, Sara [Jacobs.Sara@epa.gov]; Minor, Dustin [Minor.Dustin@epa.gov]
Subject: Quivira Mine Site - Response to Rio Algom Correspondence re RWPR Removal Action Draft Documents
Attachments: Ltr. to L. Williams re RWPR.pdf

Mitch, Hi! Thanks for your July 16, 2012 correspondence in response to my July 13, 2012 email. As you have requested, I am of course willing to limit our discussions to written correspondence; however, please note that I remain available to speak with you by telephone if this would be helpful. We understand your concern about the short time frame we have allotted for any negotiations, but U.S. EPA continues to believe this time period is adequate to allow Rio Algom to plan for the relatively limited field work required to begin by October 1, 2012.

As noted in my prior email, the documents I provided to you on the evening of Friday, July 13, 2012, were drafts, intended to help inform your client's decision about whether to participate in an Administrative Order on Consent ("AOC") negotiation. EPA requests that you let us know by the end of the day this coming Tuesday, July 24, 2012, if your client is interested in pursuing an AOC for the work identified in the draft SOW.

Based on our prior negotiations with Luke Narducci and Anthony Merrill in 2010, I believe Rio Algom is aware of the history of the Quivira Mine Site as well as Rio Algom's responsibilities for the contamination associated with that Site. U.S. EPA believes the evidence is clear that Rio Algom Mining Corporation merged with the Quivira Mining Company in 2001, and that Rio Algom Mining LLC is the successor to the merged company. As a result, Rio Algom is a party that participated in operation of the Quivira Mine Site beginning in approximately 1974 and continuing through the end of the mining operations. While the lease for mining at the Site was not transferred from Kerr McGee Corporation to Quivira Mining Company until October 1983, the available documents indicate Kerr McGee Nuclear Corporation ("KMNC"), which changed its name to Quivira Mining Company in 1983, was an operator of the Site. Among other evidence, KMNC was the holder of the NPDES permit for the Quivira Mine Site's Churchrock #1 area, and submitted many reports to EPA Region 6 on that basis. In addition, in correspondence dated October 31, 1983, Mr. W.J. Shelley, a Kerr McGee Vice President, wrote to Mr. Oscar Cabra, at U.S. EPA Region 6, stating:

"Kerr McGee Nuclear Corporation's New Mexico uranium mining and milling operations have been consolidated into a new subsidiary,

"Quivira Mining Company." Operations under the new subsidiary will remain unchanged."

Further, you have raised the issue that Rio Algom did not "operate" Red Water Pond Road. As you know, a facility under CERCLA extends to where the contamination from the facility has "come to be located." In this case, as we have discussed, the evidence indicates that trucks from the Quivira Mine Site used the portion of Red Water Pond Road ("RWPR") that we are asking Rio Algom to clean up as a haul road for taking uranium ore to its mill. The portion of the road closest to the Quivira Mine entrance is generally the most highly contaminated and the levels of contamination generally

decrease as the road approaches its intersection with Highway 566. In addition, levels of contamination drop sharply as the road curves to the west, beyond the Quivira Mine entrance and away from Highway 566. This pattern is consistent with dust and spillage from Quivira Mine Company's hauling of uranium ore from the Mine Site to the company's mill. Further, sampling of the UNC Mine Site Step-Out areas indicates that contamination from UNC's NECR Mine Site generally recedes prior to reaching RWPR. Levels of contamination then go up again at sampling points closer to the road, indicating that the source of the contamination on the road and adjacent to it was primarily Quivira's use of the road for hauling uranium ore, rather than contamination from UNC's NECR Mine Site.

As noted in the proposed draft AOC, the available evidence appears to indicate that there are areas of commingled contamination that include uranium contamination from both the NECR Mine Site and the Quivira Mine Site, including (a) the NECR Mine Site Step Out Area No. 1, (b) RWPR and its shoulders, and (c) the Eastern Drainage Area. UNC/GE has cleaned up Step Out Area No. 1 and has made a commitment to clean up the Eastern Drainage Area beginning in early September, 2012. EPA Region 9 believes it is appropriate to require Rio Algom to excavate the contamination on and adjacent to RWPR beginning in October, 2012.

We look forward to any additional questions, concerns and suggestions you may have.

Thank you for your consideration.

Laurie

Laurie Williams (ORC-3)
Assistant Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3867
Facsimile: (415) 947-3570
Cell: (510) 390-4224

From: Mitchell Klein <mjklein@polsinelli.com>
To: Laurie Williams/R9/USEPA/US@EPA, Harrison Karr/R9/USEPA/US@EPA, Claire Trombadore/R9/USEPA/US@EPA, Mark Ripperda/R9/USEPA/US@EPA
Cc: "Black, Ken" <Ken.Black@bhpbilliton.com>, Lucas Narducci <LNarducci@Polsinelli.com>
Date: 07/16/2012 04:01 PM
Subject: RAML response

Please see the letter attached.

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